

(2022) 09 CHH CK 0071
In the Chhattisgarh High Court
Case No : Writ Appeal No. 178 Of 2022

Priyadarshani Grah Nirman Sahkari Samiti Maryadit	APPELLANT
Vs	
State Of Chhattisgarh	RESPONDENT

Date of Decision : 29-09-2022

Acts Referred:

Chhattisgarh Bhumi Vikas Rules, 1984 — Rule 47
Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 2(b), 14, 25, 26, 38, 49, 50
Chhattisgarh Municipal Corporation Act, 1956 — Section 292

Citation : (2022) 09 CHH CK 0071

Hon'ble Judges : Arup Kumar Goswami, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Himanshu Pandey, Jitendra Pali, Sandeep Dubey, Pankaj Agrawal, Sushobhit Singh, Juhi Angoria

Final Decision : Allowed

Judgement

Parth Prateem Sahu, J

1. Challenge in this appeal is to the order dated 23.03.2022 passed in WPC No. 3528/2021, whereby learned Single Judge dismissed the writ petition filed by appellant.

2. Facts relevant for disposal of this appeal are that appellant is a registered Co-operative Society bearing Registration No. 116 dated 03.05.1985, was having ownership rights over the land bearing khasra Nos. 377/1, 377/2, 377/3, 378/1, 378/2, 378/5 and 378/7 situated at Mauja: Tikrapara, P.H. No. 114, Tahsil and District Raipur, Chhattisgarh. The Respondent 5/ Raipur Development Authority (in short "RDA") implemented a housing plan known as Katora Talab Scheme-16 on land in Raipur, including 1.382 hectare of land owned by appellant-society. One conveyance deed dated 16.06.1994 was executed between Respondent 5/ RDA being party No. 1 and appellant-Society being party No. 2. As per conveyance deed, 40% of total land, precisely 36 residential plots, are to be transferred after development of the land in exchange of 1.382 hectare of land.

The Respondent 5/ RDA prepared development plan and after its approval, 36 residential plots including Block A, B and C were handed over to appellant-Society. Near the aforesaid Blocks, land was kept vacant as per the layout plan. Later on, open land left as per approved layout was surrounded by boundary wall and developed as garden by doing plantation and later on, one statue was also installed. On 08.04.2021, Members of the appellant-Society came to know through newspaper that the open space in between blocks A, B and C is to be used for construction of "Sarv Samaj Samudayik Bhavan" and ₹ 3.60/- crore was sanctioned for its construction. This made the appellant-society to approach this Court by way of filing writ petition pleading that the construction of Sarv Samaj Samudayik Bhawan on the open space left in between blocks A,B and C is illegal and arbitrary. It is pleaded that the decision and the issuance of tender for construction of Samudayik Bhawan on the land reserved and earmarked as "open space" in the layout approved plan by Town and Country Planning is in violation of the provisions of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short "Adhiniyam, 1973"). Municipal Corporation is only an agency to maintain the area handed over to it which was already developed under the provisions of Adhiniyam, 1973 by Respondent 5/ RDA. Change of use of land after coming into operation of developed plan without prior permission of Director under the Adhiniyam, 1973, is not permissible. Appellant-Society and Respondent 6 were using the open space left, as garden for the benefit of residents and society within the area. Both the Societies were having their own community hall separately and therefore there was no need for construction of Samudayik Bhavan on the land reserved as open space in the development plan. Petitioner sought following reliefs in the writ petition:

"10.1 That, the Hon'ble Court may kindly be pleased to direct Respondent authorities to place entire record of the allocation of the plot bearing no... for the construction of Samudayik Bhavan.

10.2 That, the Hon'ble Court may kindly be pleased to issue writ and direct Respondent authorities not to change the use of the land.

10.3 That, the Hon'ble Court may kindly be pleased to set aside and quashed the allocation of the land for the construction of Serv Samaj Samudayik Bhavan and direct to restore the condition as it was before allocation.

10.4 Any other relief as deemed fit by this Hon'ble Court may also be granted in favour of the petitioner."

3. Respondent 3/ Municipal Corporation, who initiated process for construction of Samundayik Bhavan on the disputed land by floating tender, submitted its reply raising objections that the appellant has not approached the court with clean hands and filed this petition only to settle the intersay dispute between the appellant-society and Respondent 6-society. Respondent 5/ RDA transferred entire area of Priyadarshni colony and Guru Ghasidas colony to Municipal Corporation about 30-40 years ago. The Respondent 3/ Municipal Corporation is

taking care of the roads, drains, garden and all basic public amenities. The land in dispute is within the area of Guru Ghasidas Grih Nirman Samiti. Respondent 3/ Municipal Corporation, to protect the land from encroachment, constructed compound wall, planted trees and therefore in the photographs the open space as mentioned in the layout is looking like a garden. After development of open space as garden one statue of late Narsingh Mandal was also erected. They have denied that the open land/ space is reserved for development of garden. Appellant-Society is having its own separate garden at khasra No. 363, 369 which is being used by them. Appellant-Society and Respondent 6 society are very old and open area is situated on the edge of appellant-society. The demand made by residents of Respondent 6- society to the Hon'ble the Chief Minister, was approved. Municipal Corporation following due process of law initiated proceedings for construction of Community Hall building. Contract for construction of Samudayik Bhavan is also awarded and work is in progress. Respondent 5/ RDA gave No Objection for construction of "Dr. Bhimrao Ambedkar Sarv Samaj Manglik Bhawan. Appellant-Society is not an affected party.

4. Respondent-State submitted reply on similar line. Respondent 5/ RDA pleaded that after developing land under its scheme, colony has been handed over to Municipal Corporation for its maintenance and Respondent 5/ RDA has nothing to do with the said property. One K.P. Khande, resident of Respondent 6-colony, filed an application for intervention supporting the claim of Respondent 3/ Municipal Corporation and another application for intervention was filed by contractor who became successful bidder in the tender proceedings for construction of new Samudayik Bhavan stating that the construction work is started.

5. Learned Single Judge considering the pleadings made by respective parties as also the submissions made by counsel for respective parties dismissed the writ petition observing as under.

"12. There is specific statement of respondent No.3 in the reply filed, that the petitioner Samiti has a separate garden situated in khasra No.363 and 369 measuring 14176 and 4938 square feet i.e. total 19114 square feet. Similar Statement has been made by respondents No.1 & 2 in their reply. No rejoinder has been filed by the petitioner to rebut or contradict the statement made by respondents No.1 to 3 in their reply. Therefore, the statement and reply made by respondents No. 1 to 3 remains unrebutted. The layout map Annexure-P3 does not show the open space to be reserved for development of a garden. Therefore, the case laws cite by the petitioner do not give any guidance in the present case. On the basis of these observations, I am of this view that this petition is not fit to be allowed, hence, it is dismissed. The interim relief granted earlier by this Court stands vacated."

6. Mr. Himanshu Pandey, learned counsel for appellant would submit that learned writ court has not considered the subject matter in issue, in the writ petition, in proper perspective. The residential colony under Katora Talab Scheme-16 with A,

B and C blocks was developed on the land including the land owned by appellant-society. Pursuant thereto, by way of conveyance deed executed between appellant-society and Respondent 5/ RDA, 40% of the developed land with 36 residential plots shown as Block A, B and C was handed over. Between these blocks, open space was left under the layout plan approved by the competent authority. He contended that once the land development plan is approved by the competent authority under the Adhiniyam, 1973, change of use of land by any person or authority is not permitted without prior permission of Director under the Adhiniyam, 1973. The land, subject matter of this appeal and in dispute, is reserved for open space/ garden under the approved layout plan by the competent authority and as per the judgment of Hon'ble Supreme Court in case of Bangalore Medical Trust v. B.S. Muddappa and others, reported in (1991) 4 SCC 54, the land/ garden reserved for public use is not permitted to be used for any other purposes. Pleadings made by Respondent 3 and Respondents 1 & 2 in reply that Respondent 6-society raised demand for construction of Samudayik Bhavan is also not correct as the Respondent 6-society in its meeting resolved to oppose the construction. He submits that Section 26 of the Adhiniyam, 1973 provides that prior permission of Director is required for making changes in the sanctioned layout plan and further Section 292 of the Municipal Corporation Act, 1956 envisages bar upon the powers of the Municipal Corporation for making any change in the approved layout plan sanctioned by Director under the Adhiniyam, 1973. Respondents have not taken any prior approval from the competent authority. He also referred to layout plan available in record to submit that in the layout plan, the land in dispute is shown as open space.

7. Mr. Sandeep Dubey, learned counsel for Respondent 3/ Municipal Corporation would submit that the learned Single Judge has rightly taken note of the fact that two gardens are available at khasra Nos. 363, 369, which was not rebutted by appellant-society. There is no mention in the layout plan that the open space is reserved for development of garden. He further submitted that the area and land on which Respondent 3 initiated work of construction of Sarv Samaj Manglik Samudayik Bhavan is already transferred by Respondent 5/ RDA to Respondent 3/ Municipal Corporation and it is Respondent 3 who is taking care of roads, drain, electricity and other basic amenities over the area. The demand made by local residents of Respondent 6-society for construction of Samudayik Bhavan, was approved by Hon'ble the Chief Minister. After following due process, estimate for construction of Samudayik Bhawan was prepared and sanctioned. Tender was issued and now construction of building is started by successful bidder (contractor). Vide Annexure R3/3 (annexed in writ petition), Respondent 5/ RDA has already granted permission to Respondent 3 for raising construction and development of building over the subject land. Transfer of land is also not denied by Respondent 5/ RDA. Construction of Samudayik Bhavan is for the recreational activities and open space could be used for recreational activities. In support of aforementioned submission he referred to Rule 47 of the Chhattisgarh Bhumi Vikas Rules, 1984 (in short "Rules of 1984").

8. Learned State counsel adopting the submissions of learned counsel for Respondent 3 would submit that after developing land by Respondent 5/ RDA as Katora Talab Scheme-16, it was handed over to Respondent 3/ Municipal Corporation. It is Respondent 3 who is maintaining drainage system, roads and other basic amenities. He also referred Rule 47 of the Rules of 1984 and submitted that the open land is being used for recreational activities and construction of Samudayik Bhavan is for the same.

9. Mr. Pankaj Agrawal, learned counsel for Respondent 5/ RDA would submit that the permission and NOC granted by Respondent 5 is for use of land according to the approved layout.

10. Mr. Sushobhit Singh, learned counsel for intervener/ contractor would submit that the intervener is suffering loss because of stay of construction work, which had already been started.

11. Ms. Juhi Angoria, counsel for private respondent, who is a resident of Respondent 6-society, would support the impugned judgment.

12. We have heard learned counsel for the parties and perused the pleadings and documents placed on record in the writ appeal as well as in the writ petition.

13. It is not in dispute that the subject land is situated at Katora Talab Scheme-16, developed by Respondent 5/ RDA as per layout plan. It is also not disputed by learned counsel for respondents that the land in dispute is shown as 'open space' in between blocks A, B and C in the approved layout plan. The grievance raised by appellant-society was that no building construction can be raised on the land earmarked/ reserved for open space or garden in the layout plan without prior permission from the competent authority. Respondents admit that the land on which construction of Samudayik Bhavan is started by Respondent 3 is on the land reserved as open space but it is submitted that under the Rule 47 of Rules of 1984, 'open land' can be used for recreational activities and therefore construction of Samudayik Bhavan is being started. In view of the aforementioned facts of the case, we find it appropriate to extract relevant provisions of Adhiniyam, 1973 and rules framed thereunder.

"2. (b) "amenity" includes roads and streets, water and electric supply, open spaces, parks, recreational area, natural features, play-grounds, street lighting, drainage, sewerage and other utilities, services and conveniences.

(c) "building" means a house, hut, shed or other structure for whatever purposes and with whatever material constructed and every parts thereof, whether temporary or permanent and whether used as human habitation or not and includes a well, latrine, drainage work, fixed platform, verandah, plinth, door steps, compound wall, fencing and the like: and any work connected therewith but does not include plant or machinery comprised in a building;

(g) "development plan" includes a zoning, plan;

(h) "Director" means the Director of Town and Country Planning appointed under this Act;

(i) "existing land use map" means a map indicating the use to which lands in any specified area are put at the time of preparing the map, and includes the register prepared, with the map giving details of land use;

(k) "local authority" means—

(i) a Municipal Corporation constituted by or under the Madhya Pradesh Municipal Corporation Act, 1956;

(ii) a Municipal Council or Nagar Panchayat constituted by or under the Madhya Pradesh Municipalities Act, 1961

(iii) a Gram Panchayat constituted under the Madhya Pradesh Panchayat Raj Adhiniyam, 1993;

(u) "town development scheme" means a scheme prepared for the implementation of the provisions of a development plan by the Town and Country Development Authority and includes "scheme";

(v) "Town and Country Development Authority" means an authority established under Section 38;

14. Section 14 deals with 'Director to prepare development plans'; Section 25 deals with 'Conformity with development plan'; Section 26 deals with 'Prohibition of development without permission'; Section 38, which deals with Establishment of Town and Country Development Authority, is extracted below for ready reference:

'38. Establishment of Town and Country Development Authority.— (1) The State Government may, by notification, establish a Town and Country Development Authority by such name and for such area as may be specified in the notification.

(2) The duty of implementing the proposal in the development plan, preparing one or more town development schemes and acquisition and development of land for the purpose of expansion or improvement of the area specified in the notification under sub-section (1) shall, subject to the provision of this Act vest in the Town and Country Development Authority established for the said area.

Provided that, the duty imposed on the Town and Country Development Authority shall, till that authority is established for any area under sub-section (1), be performed by the local authority having jurisdiction over such area as if it were a Town and Country Development Authority established under this Act.

(3) On the establishment of the Town and Country Development Authority for the area to which the proviso to sub-section (2) applies, the following consequences shall ensue in relation to that area, namely :-

(i) all assets and liabilities acquired and incurred by the local authority in the

discharge of the duty under the proviso to sub-section (2) shall belong to and be demand to be the assets and liabilities of the Town and Country Development Authority established in place of such local authority;

(ii) all records and papers belonging to the local authority referred to in clause (i) shall vest in and be transferred to the Town and Country Development Authority established in its place.

15. Section 49 deals with Town Development Schemes, which reads as under:

"49. Town Development Schemes. – A town development scheme may make provision for any of the following matters,-

(i) acquisition, development and sale or leasing of land for the purpose of town expansion;

(ii) acquisition, relaying out of, rebuilding, or relocating areas which have been badly laid out or which has developed or degenerated into a slum;

(iii) acquisition and development of land for public purposes such as housing development, development of shopping centres, cultural centres, administrative centres;

(iv) acquisition and development of areas for commercial and industrial purposes;

(v) undertaking of such building or construction work as may be necessary to provide housing, shopping, commercial or other facilities;

(vi) acquisition of land and its development for the purpose of laying out or remodeling of road and street patterns;

(vii) acquisition and development of land for playgrounds, parks, recreation centres and stadia;

(viii) reconstruction of plots for the purpose of buildings, roads, drains, sewage lines and other similar amenities;

(ix) any other work of a nature such as would bring about environmental improvements which may be taken up by the authority with the prior approval of the State Government.

16. Section 50 deals with "Preparation of Town Development Schemes", sub-section 1 of which empowers the town and country development authority to declare its intention and to prepare a town development scheme.

17. In the case at hand, Respondent 5/ RDA prepared the development scheme known as Katora Talab Scheme-16. In the layout prepared by RDA the land under the scheme-16 has been reserved for different purposes as appearing from the layout plan filed by the parties and available in the record. In the layout plan, the statement of area is mentioned as Area under P & SP Green Commercial & Burial Gr.; Area under group housing; Area under Planning; Area under Plots;

Area under Roads; Area under Amenities and Area under Open /Park. Respondent 3 has not disputed that the area on which construction of Samudayik Bhavan was sanctioned was an 'open space' as per the approved layout plan. The open space as defined under Section 2(b) under the heading of Amenities which is separate than that of parks and recreational activities area. Under the Adhiniyam, 1973 different lands are to be reserved under the head of amenities and open space in the development area is one of the amenities as defined under Section 2(b). The open spaces are left in the residential areas with some purpose to provide light, air etc. Open spaces within the residential colonies are being used by public at large.

18. Section 26 of the Adhiniyam, 1973 prohibits change of use of any land or carry out any development of land without written permission of the Director, except some exceptional works as mentioned therein. Respondent 3 before raising construction of Samudayik Bhavan on the land reserved as open space/ park under the layout prepared by Respondent 5 had not made any application before the competent authority seeking permission for change of use of land. Respondent 3/ Municipal Corporation being one of the functionaries constituted by the State Government is expected to act in accordance with the provisions of law governing the field to preserve the open places. Leaving open space, park and play grounds in a development plan, is with a view to protect the residents of colonies from the ill-effects of urbanization. Section 49 of the Adhiniyam, 1973 provides for town development scheme including development of land for play grounds, parks, recreational centers and stadia. It is also not in dispute that the open space at later point of time was surrounded by boundary wall and developed as park. By the said development, nature of land was not changed as it remained open to sky. Constructing permanent building on open land i.e., Samudayik Bhavan (community hall) is change of use of land, hence, under the provisions of law prior permission from the competent authority is mandatory. Learned Single Judge dismissed the writ petition only considering that, already two parks are situated within the colony of appellant-society.

19. Question involved in this appeal is that whether Respondent 3/ Municipal Corporation can be permitted to change the use of land, other than the layout plan without following due procedure of law. The disputed open land (reserved as open space) is adjoining two colonies and members of the appellant-society being residents of same vicinity will definitely be affected if the land reserved as 'open space' in the layout is being used for construction of Samudayik Bhavan (permanent building) without following provisions of law. For the said reasons, submission of learned counsel for Respondent 3 that the appellant/ petitioner has no locus standi to file writ petition is not sustainable and it is hereby repelled.

20. Learned Single Judge failed to consider that even if the 'open space' is not reserved for development of garden then also whether Respondent 3/ Municipal Corporation can construct a permanent building in the name of 'Samudayik Bhavan' over the land reserved as 'open space' under the layout prepared by

RDA at the time of developing the area known as Katora Talab Scheme-16.

21. Petitioner, along with application for taking additional documents on record, submitted proceedings of meeting of Respondent No. 6-society dated 09.04.2022 as Annexure AD1, wherein members present resolved to oppose construction of building on garden and to file PIL. Respondent No. 5/ RDA in its report filed in writ petition stated that colony was handed over to Respondent No. 3/ Municipal Corporation for maintenance. Annexure R3/3 filed by Respondent No. 3/ Municipal Corporation along with their reply is a memo dated 21.06.2021 issued by Respondent No. 5/ RDA in the form of 'NOC', wherein it is mentioned that the land for which NOC is sought is reserved for open space and recorded owner is Respondent No. 5/ RDA. It further mentioned that if applicant ie., Respondent No. 3 uses the land as per layout, the office of Respondent No. 3 is having no objection.

22. From the contents of memo of 'No Objection' on which Respondent No. 3 is harping to say Respondent No. 5 granted No Objection, in clear term gave no objection for use of land as per layout. The land reserved as open space in layout is not in dispute and therefore the action on the part of Respondent No. 3 in constructing Samudayik Bhawan is illegal.

23. Hon'ble Supreme Court in case of Dr. G.N. Khajuria and others vs. Delhi Development Authority and others reported in (1995) 5 SCC 762 , while challenging the action of Delhi Development Authority of allotment of land reserved for park in residential colony for nursery school held that the said allotment amounted to misuse of power and is illegal and held thus:

"8. We, therefore, hold that the land which was allotted to respondent No.2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of respondent No.2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of respondent No.2 should be cancelled and we order accordingly. The fact that respondent No.2 has put up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by respondent No.2 or by any other body."

24. Recently Hon'ble Supreme Court in case of Anjuman E. Shiate Ali and another vs. Gulmohar Area Societies Welfare Group and others, reported in (2020) 20 SCC 698, while considering the dispute of raising construction over the plots shown as open space/ garden in the approved layout, has held thus:

"24. ...Merely because in such development plan prepared, in the area shown for

residential purpose, authorities have not indicated the open spaces/garden, which were already left in the approved layout in such residential area, appellants cannot claim the benefit of making constructions in the plots which were left towards open space/garden. It is fairly well settled that the open spaces/garden left in an approved layout, cannot be allowed for the purpose of constructions. However, it is to be noticed that if one wants to utilize a big plot within the area of residential usage as indicated in the development plan, it is mandatory to sub-divide such big plots into smaller plots for utilizing them for the purpose of construction. When the layout is to be approved, certain percentage of area is required to be left towards roads, open plots, garden etc. ...

25. It is also to be noticed that the open spaces are required to be left for an approval of layout or for the purpose of creating lung space for the owners of other plots where constructions are permitted. The 4 plots bearing Nos. 1, 3, 5 and 6, were sub-divided at the instance of the appellant-Society in its entirety and approval was taken for dividing such land into 61 plots. It is not open to claim for construction in the two plots which are reserved for open spaces/garden spaces also. It is fairly well settled that in an approved layout, the open spaces which are left, are to be continued in that manner alone and no construction can be permitted in such open spaces. The Development Plan which was submitted in the year 1999, as per the 1991 DCR, will not divest the utility of certain plots which are reserved for open spaces in the approved layout. The appellants cannot plead that such a layout was only temporary and as a stop gap arrangement, the said two plots were shown as open spaces/garden and now they be permitted to use for construction."

25. In view of the aforementioned facts of the case where undisputedly the land subject matter of appeal is reserved as open land/ space in the layout and also considering the aforementioned rulings of Hon'ble Supreme Court, we are of the view that construction of Sarv Samaj Samudayik Bhavan on land reserved as open space is illegal. Respondent 3/ Municipal Corporation cannot use the land for any purpose other than the land reserved in layout plan without seeking prior permission of the competent authority.

26. For the foregoing, impugned order passed in Writ Petition (C) No. 3528/2021 is set aside and writ appeal is allowed. Respondent 3/ Municipal Corporation is directed not to change the use of land, subject matter of writ petition, situated at Katora Talab Scheme-16 in between Blocks A, B and C. Respondent No. 3 is further directed to restore the condition of the subject land as it was, before starting construction of Sarv Samaj Samudayik Bhavan, within a period of 04 months from the date of passing of order.

27. The contractor will be at liberty to avail such remedy as may be available to him under the law.